

# ROLL CALL

By Senator Tom Carper  
February 7, 2005

One of the fundamental principles of our legal system is the right of consumers and everyday people to seek compensation if they are wronged.

If a company sells a faulty product that harms people, it should be held accountable and be forced to change its behavior. Similarly, if a business pollutes a neighborhood and people get sick or die, it should expect to pay damages and medical expenses to the aggrieved families.

The problem is that our legal system does not always work that way. Too often, companies aren't being held responsible for their business practices, and people who are truly injured or sick are not getting the compensation they deserve.

Congress has a golden opportunity this year to pass at least two examples of "common-sense legal reform" to make the system work better. Legislation to curb abuses of class action lawsuits, as well as a separate effort to fix how we compensate asbestos victims, would go a long way toward restoring balance to our legal system and making sure everyone gets his or her day in court.

Class action lawsuits are not, in and of themselves, a bad thing. In fact, they can serve a useful purpose by compensating people who are harmed by flawed products or services offered by both large and small companies.

In recent years, however, the nation's class action system has been badly abused by the practice of "venue shopping," or when plaintiffs' attorneys file cases in a court that historically offers them the best chance for success.

The growth of legal activity in these "magnet courts" – usually small, county courts where judges are locally elected – has been extraordinary. The best known among these "magnet courts" is Madison County, Ill., which has seen a 5,200 percent increase in cases filed since 1998.

Because the cost of defending themselves repeatedly in places like Madison County is so high, most businesses have no choice other than to settle class action cases before they go to trial, regardless of whether the case is meritorious. These settlements usually award millions of dollars in fees to attorneys but little or nothing for plaintiffs seeking to be made whole.

Take, for example, a recent class action lawsuit against Poland Spring. Consumers sued the company, claiming its water was neither pure, nor from a spring. Under the settlement, consumers received coupons for more Poland Spring water – while their attorneys received \$1.35 million. The company didn't admit to any wrongdoing and hasn't changed the way it bottles or markets its water. That's not how our class action system should work.

Legislation the Senate is set to consider this month – the Class Action Fairness Act – would help curb the frequency of such legal abuses by authorizing federal courts to hear certain interstate class actions, or those lawsuits with a national scope. Unlike locally-elected judges, federal judges are accountable to the whole nation, not the people who elected them or the businesses and attorneys who contributed to their campaigns. Those of us who support the Class Action Fairness Act believe that federal judges should be presiding over more cases that have national policy implications than is the case today.

Thanks to the work of both Democrats and Republicans, the legislation includes strong consumer-protection provisions. The bill ensures that truly local cases remain in state court, prohibits settlements in which plaintiffs actually lose money (yes, it does happen), and ensures that attorneys' fees in coupon settlements be tied directly to the number of coupons that are actually redeemed by plaintiffs. No longer will consumers walk away with a \$2 coupon they'll never cash in while attorneys on both sides receive millions in legal fees.

Congress must also finish work this year on reforming our asbestos litigation system by establishing a well-financed trust fund for asbestos claims so that those people whose health is damaged by exposure get fairly compensated. The stakes in this game are high – for asbestos victims, the business community, and the U.S. economy.

For two decades, Congress has struggled mightily to find a solution to the asbestos crisis, which only continues to get worse. In 1982, there were only 300 asbestos defendants; today there are more than 8,400.

Unfortunately, not everyone who is sick or dying from asbestos exposure is getting fairly compensated. As the number of claimants has grown, so has the propensity for fraud and abuse. On average, claimants now only receive 43 cents for every dollar paid by companies. The rest goes to legal fees and transaction costs.

Not surprisingly, this is having a profoundly negative effect on the economy. Over the past 20 years, the cost of asbestos liability has jumped from \$1 billion to \$70 billion. More than 70 companies have filed bankruptcy because of asbestos claims – half of those coming in the past five years and many of them small businesses unfairly sucked into the litigation system. In addition to losing jobs, workers in many of these companies have watched the value of their 401(k) plans drop an estimated 25 percent. It's time for a change.

As Senate Judiciary Chairman Arlen Specter and others work to complete the bill this year and establish a workable asbestos trust fund, we need to keep in mind three principles. First, those people who are sick with asbestos-related diseases should be compensated quickly and fairly. Second, those who are not sick now but may become impaired in the future should be able to get the money they deserve. Third, those who may have been exposed to asbestos but are not sick and never will be sick should not stand in the way of legitimate claims.

Both Democrats and Republicans alike feel our nation's legal system is in trouble and are committed to restoring a fairer process for consumers and businesses. Passing meaningful class action reform and finally breaking a nearly 20-year deadlock on comprehensive asbestos legislation would go a long way toward making that happen.